

APPLICATION FOR JUDICIAL OFFICE

SECTION I: PUBLIC INFORMATION (QUESTIONS 1 THROUGH 65)

PERSONAL INFORMATION

1. Full Name: **Krista Michelle Carman**
2. Have you ever used or been known by any other name? Yes If so, state name: **Krista Michelle Warnock**
3. Office Address: **246 S. Cortez Street, Prescott, Arizona 86303**
4. How long have you lived in Arizona? **34 years** What is your home zip code? **86303**
5. Identify the county you reside in and the years of your residency.
Yavapai County; 15 years
6. If appointed, will you be 30 years old before taking office? ☒ yes ☐ no
If appointed, will you be younger than age 65 at the time of appointment?
☒ yes ☐ no
7. List your present and any former political party registrations and approximate dates of each:
Republican; 1995-present

Filing Date: May 9, 2019
Applicant Name: Krista M. Carman

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8. Gender: **Female**

Race/Ethnicity: **Caucasian**

EDUCATIONAL BACKGROUND

9. List names and locations of all post-secondary schools attended and any degrees received.

Northern Arizona University, Bachelor of Science, Elementary Education and Special Education, *magna cum laude*, 1998

Arizona State University, Juris Doctor, *cum laude*, 2002

10. List major and minor fields of study and extracurricular activities.

**Double major: Elementary Education and Special Education
Law**

Extracurricular Activities: piano and vocal music; outdoor sports and exercise; Volunteer Director of the Homeless Legal Assistance Project, ASU College of Law; law student member of the Christian Legal Society and Women Lawyers Group.

11. List scholarships, awards, honors, citations and any other factors (e.g., employment) you consider relevant to your performance during college and law school.

**Graduated *magna cum laude* from Northern Arizona University
Graduated *cum laude* from Arizona State University, College of Law
Commencement Speaker - Northern Arizona University, College of Education**

**Pro Bono Service Award, Arizona State University, College of Law
Externship – Arizona Center for Disability Law
Second Year Law School Employment – Broening, Oberg, Wilson, Woods & Cass**

PROFESSIONAL BACKGROUND AND EXPERIENCE

12. List all courts in which you have been admitted to the practice of law with dates of admission. Give the same information for any administrative bodies that require special admission to practice.

Arizona Supreme Court – January 7, 2003

United States District Court, District of Arizona – March 8, 2004

United States Court of Appeals for the Ninth Circuit, August 15, 2006

13. a. Have you ever been denied admission to the bar of any state due to failure to pass the character and fitness screening? **No** If so, explain.
- b. Have you ever had to retake a bar examination in order to be admitted to the bar of any state? **No** If so, explain any circumstances that may have hindered your performance.
14. Describe your employment history since completing your undergraduate degree. List your current position first. If you have not been employed continuously since completing your undergraduate degree, describe what you did during any periods of unemployment or other professional inactivity in excess of three months. Do not attach a resume.

EMPLOYER	DATES	LOCATION
Chandler Unified School District	Jan. 1999-May 1999	Chandler, AZ
Unemployed while attending ASU Law School –	May 1999	May 2000
Warnock, MacKinlay & Associates	May 2000-May 2001	Phoenix, AZ
Broening Oberg Wilson Woods & Cass	May 2001-August 2001	Phoenix, AZ
Warnock, MacKinlay & Associates	August 2001-April 2002	Phoenix, AZ
Unemployed April 2002-September 2003 – had a baby and moved to WA		
Warnock, MacKinlay & Associates	Sept 2003-Aug 2004	Phoenix, AZ
Warnock, MacKinlay & Associates	Aug. 2004-Jan. 2009	Prescott, AZ
Warnock, MacKinlay & Carman	Jan 2009- Jan 2016	Prescott, AZ
Carman Law Firm	Jan 2016-present	Prescott, AZ

15. List your law partners and associates, if any, within the last five years. You may attach a firm letterhead or other printed list. Applicants who are judges or commissioners should additionally attach a list of judges or commissioners

Filing Date: May 9, 2019
Applicant Name: Krista M. Carman

currently on the bench in the court in which they serve.

**André Carman
Brian Warnock
James (Jay) N. MacKinlay
J. Kent MacKinlay
Stacie Robb
Nate Preston
Ryan Skiver
James Sparks
Emily Dolan
Daniel Yamauchi**

16. Describe the nature of your law practice over the last five years, listing the major areas of law in which you practiced and the percentage each constituted of your total practice. If you have been a judge or commissioner for the last five years, describe the nature of your law practice before your appointment to the bench.

I have been a partner in the Carman Law Firm since 2016 (prior to 2016 I was a partner in Warnock, MacKinlay and Carman, PLLC since 2010. Carman Law Firm split off from Warnock, MacKinlay and Carman, PLLC in 2016). My practice areas include personal injury (inclusive of wrongful death, premises liability, auto collisions, elder abuse, and dog bites) (65%); employment law (11%); insurance coverage (overlaps with personal injury); probate (5%); education/school law (8%); commercial litigation (2%); medical malpractice (2%); probate litigation and court appointed counsel (7%). I have also practiced as a victim's rights attorney (privately retained) in criminal matters and have experience in dependency court as a foster parent and advisor for other foster parents.

17. List other areas of law in which you have practiced.

**Criminal – Victim's Rights Advocacy
Appellate – civil, bankruptcy, and family law appeals in State and Federal Court.
Probate – probate litigation, guardianships, conservatorships, court appointed counsel
Transactional – contracts, intergovernmental agreements, memoranda of understanding
Election - limited scope (bond and override election for school district)**

18. Identify all areas of specialization for which you have been granted certification by the State Bar of Arizona or a bar organization in any other state.

Filing Date: May 9, 2019
Applicant Name: Krista M. Carman

None.

19. Describe your experience as it relates to negotiating and drafting important legal documents, statutes and/or rules.

As a civil litigator, I draft pleadings on a daily basis. Complaints, discovery requests, responses and related motions, disclosure statements, motions for summary judgment, motions to dismiss, mediation statements and arbitration statements.

Additionally, I have practiced a great deal in the area of appellate practice for which I have drafted appellate briefs, as well as petitions for review.

In my role as counsel for the local school district, I have drafted contracts, employment agreements, by-laws, inter-governmental agreements, and memoranda of understanding.

As a court appointed arbitrator and volunteer fee arbitrator for the State Bar of Arizona, I have drafted arbitration decisions. The State Bar matters necessarily require interpretation of the ethical rules (specifically E.R. 1.5) and application to a variety of practice areas.

20. Have you practiced in adversary proceedings before administrative boards or commissions? No If so, state:

I have never appeared before an administrative board in an adversarial proceeding, but I have filed charges in employment discrimination matters with the Arizona Civil Rights Division of the Attorney General's Office and the Equal Employment Opportunity Commission.

- a. The agencies and the approximate number of adversary proceedings in which you appeared before each agency.

- b. The approximate number of these matters in which you appeared as:

Sole Counsel: _____

Chief Counsel: _____

Associate Counsel: _____

21. Have you handled any matters that have been arbitrated or mediated? Yes
If so, state the approximate number of these matters in which you were involved

Filing Date: May 9, 2019
Applicant Name: Krista M. Carman

as:

Sole Counsel:	<u>115</u>
Chief Counsel:	<u>25</u>
Associate Counsel:	<u>25</u>

22. List at least three but no more than five contested matters you negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (3) a summary of the substance of each case; and (4) a statement of any particular significance of the case.

*

CSAA General Insurance Company v. Cheryl Erdman

1. Mohave County Superior Court, June 2016-June 2017

2. Christopher Robbins, chris@hhdllawfirm.com, 602-889-2440 – CSAA General Insurance Company. I represented Plaintiff Erdman.

3. *Erdman* was an insurance coverage dispute on an underinsured motorist claim. Ms. Erdman believed she had purchased underinsured motorist coverage for her job as a rural mail carrier. This coverage was required by the U.S. Postal Service. Subsequently, she was seriously injured in a collision while she was working as a rural mail carrier in Kingman. She collected the limits of insurance from the at-fault driver and then sought compensation from her underinsured motorist carrier, CSAA. CSAA denied her claim because she was working at the time as an independent contractor for the U.S. Postal Service and cited a “delivery exclusion” in the insurance contract. CSAA filed suit seeking a coverage determination based on the exclusion in the policy and Ms. Erdman counterclaimed alleging that the agent was negligent in selling her underinsured motorist coverage because he was aware that she needed it for her job as a mail carrier.

4. *CSAA v. Erdman* was a difficult coverage matter with controversial factual issues and a substantial insurance policy at issue. Ms. Erdman was seriously hurt and was not compensated for her injuries and damages. She owed over \$100,000 to the local hospital and was at-risk for filing bankruptcy. Ultimately, we negotiated a favorable settlement for Ms. Erdman and negotiated the hospital lien to nearly 10% of what she owed the hospital.

Leek v. Advanced Plastic Surgery Center, et al.

1. Yavapai County Superior Court, CV2013-00886, August 2013 –December 2015

Filing Date: May 9, 2019
Applicant Name: Krista M. Carman

2. James Mack, Esq. 602-343-2710, no email address; successor counsel, Mark Drutz, Esq., 928-445-5935; mdrutz@mdkflaw.com for Advanced Plastic Surgery Center. Krista M. Carman, Esq. (lead counsel), John Napper, Esq. (beginning of litigation), Angela M. Bradshaw Napper, Esq. (end of litigation), André E. Carman, Esq. (bankruptcy counsel) for Plaintiff.
3. *Leek* was a sexual harassment, breach of contract, and wrongful termination case. Leek first brought a claim for discrimination and violation of her civil rights to the Arizona Civil Rights Division of the Attorney General's Office. Once she received her Right to Sue letter from that agency, she filed suit in Yavapai County Superior Court alleging that she had been sexually harassed and that her employer had terminated her because she would no longer comply with his sexual requests. Leek alleged the employer's actions were in violation of the law and in breach of a written employment contract. The defendants denied that Leek was sexually harassed. Instead, the principal defendant claimed she was a voluntary participant in the sexual activities and that the contract was entered into under duress and therefore voidable. *Leek* succeeded in a partial summary judgment order and the remaining issues in the case were set for trial. However, the principal defendant filed bankruptcy the night before the trial. The matter was subsequently settled.
4. The significance of the *Leek* case were the unique Arizona employment law issues that came into play in one case. Written employment law contracts are unusual in Arizona given the laws favorable to employers. Additionally, the defense that the sexual conduct was consensual was a difficult, but unique claim to overcome. Finally, the bankruptcy filing of the defendant on the eve of trial was an uncommon occurrence and forced counsel to regroup and re-evaluate strategies.

Braden v. AIRES and the State of Arizona

1. Maricopa County Superior Court, CV2006-006902, 2006-2010
2. Craig Knapp, Esq., 602-991-7677, knapp@krattorney.com, co –counsel for Jacob Braden; Michael Gaughan, Esq, for the State of Arizona, 602-542-4951, michael.gaughan@azag.gov for the State of Arizona, Charles Callahan, 602-240-6670, ccallahan@hofkklaw.com for AIRES, Ltd.
3. *Braden* involved the wrongful death of a profoundly-disabled young man. An Adult Protective Services Act (APSA) claim was brought against the State of Arizona, Division of Developmental Disabilities for improper placement and negligence. A claim for the wrongful death and APSA liability was also brought against AIRES, the group home in which *Braden* resided and passed away. *Braden* did not receive proper care, and his family did not know the cause of his death nor the extent of his suffering when he passed which was what haunted them most. A case was filed in Superior Court and the matter was litigated for several years. On the eve of trial, the case was settled as to

Filing Date: May 9, 2019
Applicant Name: Krista M. Carman

Defendant AIRES when it was discovered that *Braden* had been dropped on the side of a tub, the resulting injuries were ignored, and he was denied medical care for weeks as he slowly bled internally. The matter went to the Supreme Court on the issue of whether the State could be independently liable as an actor under APSA. The State prevailed in the Supreme Court.

4. *Braden* was of the utmost significance to Jacob Braden's mother. Her sole desire was to learn how her son had died and to prevent such a horrific ending for any other special needs person who was living in a home owned by the defendant company. We were able to learn the mechanism of his injury and the cause of his death. Additionally, the case, resulted in new law interpreting APSA -- specifically, that the State is not a "legal entity" for purposes of the statutory scheme and there is no direct civil remedy as to the State for "vulnerable adults" that suffer abuse or neglect. Although not the outcome plaintiff hoped for, the case resulted in a notable opinion and was a poignant case to litigate before the Arizona Supreme Court.

23. Have you represented clients in litigation in Federal or state trial courts? Yes
If so, state:

The approximate number of cases in which you appeared before:

Federal Courts: 25

State Courts of Record: 125

Municipal/Justice Courts: 2

The approximate percentage of those cases which have been:

Civil: 99%

Criminal: 1%

The approximate number of those cases in which you were:

Sole Counsel: 50

Chief Counsel: 75

Associate Counsel: 27

The approximate percentage of those cases in which:

You wrote and filed a pre-trial, trial, or post-trial motion that wholly or

Filing Date: May 9, 2019
Applicant Name: Krista M. Carman

partially disposed of the case (for example, a motion to dismiss, a motion for summary judgment, a motion for judgment as a matter of law, or a motion for new trial) or wrote a response to such a motion: 40%

You argued a motion described above 25%

You made a contested court appearance (other than as set forth in the above response) 1%

You negotiated a settlement: 85%

The court rendered judgment after trial: 0

A jury rendered a verdict: 14%

The number of cases you have taken to trial:

Limited jurisdiction court 0

Superior court 9

Federal district court 1

Jury 10

Note: If you approximate the number of cases taken to trial, explain why an exact count is not possible.

24. Have you practiced in the Federal or state appellate courts? Yes If so, state:

The approximate number of your appeals which have been:

Civil: 18

Criminal:

Other:

The approximate number of matters in which you appeared:

As counsel of record on the brief: 18

Filing Date: May 9, 2019
Applicant Name: Krista M. Carman

25. Have you served as a judicial law clerk or staff attorney to a court? No If so, identify the court, judge, and the dates of service and describe your role.
26. List at least three but no more than five cases you litigated or participated in as an attorney before mediators, arbitrators, administrative agencies, trial courts or appellate courts that were not negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency and the name of the judge or officer before whom the case was heard; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

Meloche v. Town of Prescott Valley

1. October 23-26, 30, 31 and November 1, 2012
2. Yavapai County Superior Court, Judge Kenton Jones
3. Krista Carman, Co-Counsel for Plaintiff; Ryan Skiver, Associate Trial Counsel for Plaintiff, rskiver@skiverlawfirm.com, 480-626-1667; John White, Co-Counsel for Plaintiff, lawjt.white@gmail.com, 623-523-2242; Larry Crown, Defense counsel for Prescott Valley Police Department, ljc@jhc-law.com; 602-234-7800; Elan Mizrahi, Defense associate trial counsel, esm@jhc-law.com, 602-234-7831
4. The *Meloche* case was a wrongful death case brought against the Town of Prescott Valley for the shooting of Ms. Meloche's husband. The allegation was that the police hastily responded to a domestic violence call and negligently handled the call resulting in the untimely shooting death of Mr. Meloche.
5. The case dealt with application of negligence and gross negligence involving a state agency in the wrongful death of a citizen. The trial presented issues of police practices and whether the actions rose to a violation of the standard of care.

Lohmeier v. Hammer

1. July 12 -14, 2005
2. Yavapai County Superior Court, Judge Ralph Hess

Filing Date: May 9, 2019
Applicant Name: Krista M. Carman

3. Krista Carman, Plaintiff Lead Counsel; Brian Warnock, Plaintiff Co-Counsel, 602-541-0615, quailbrw@aol.com; Michael Murphy, Defense Counsel, 928-445-6860, mmurphy@mshwlaw.com
4. *Lohmeier* involved an automobile collision wherein Mr. Lohmeier alleged he suffered injury. The defense argued that the forces involved in the collision were inconsistent with the claimed injuries, but admitted that Mrs. Hammer did rear-end Mr. Lohmeier.
5. *Lohmeier* was significant not in its verdict, but in the appellate decisions that followed. This case addressed the use of a biomechanical engineer as an expert witness on causation in a personal injury case. *Lohmeier* contested the admissibility and use of a biomechanical engineer on causation. The Court of Appeals, following *Logerquist v. McVey*, held that this testimony is admissible.

Casanova/Aragon v. Nims

1. March 22-25; March 28-April 1, 2011
2. Maricopa County Superior Court, Judge Jeanne Garcia
3. Krista Carman, counsel for Aragon minors (four children) Plaintiffs; John Aragon, Counsel for Plaintiff Casanova, 623-214-1527, johnavocat@yahoo.com, Harry Howe, counsel for Defendant Nims, 480-948-0940, jeni@hlhowe.phxcoxmail.com
4. *Casanova* was a personal injury matter wherein Plaintiff Casanova was the grandmother of the four Aragon minors. The defense alleged comparative fault. The collision occurred in an intersection and involved a left turn. The question was whether Mr. Nims was negligent when he turned in front of Plaintiffs or whether Plaintiff Casanova was negligent in proceeding through the light. Many issues were raised such as a seatbelt defense, negligence as to Casanova for failure to ensure the minors wore seatbelts, and comparative fault.
5. *Casanova* was significant in apportioning fault between drivers in a factually unclear scenario. The seatbelt defense also played a big part in the trial as there was evidence for both the use and non-use of seatbelts by the children and no one knew for sure. This was a case in which the jury was forced to make many factual determinations about what occurred and how the children were injured.

Robbins v. State Farm Insurance Company

1. May 13-15, 2009

Filing Date: May 9, 2019
Applicant Name: Krista M. Carman

2. Yavapai County Superior Court, Judge Howard Hinson
 3. Krista Carman, Co-Counsel Plaintiff, Brian Warnock, Co-Counsel for Plaintiff, 602-541-0615, quailbrw@gmail.com, Lori Kirsch-Goodwin, Counsel for Defendant State Farm Insurance, 480-585-0600, lkg@kgklaw.com
 4. *Robbins* involved a coverage dispute following a house fire. The issue was whether the "replacement cost" provision of the policy was misleading under the consumer fraud statute and, if so, whether State Farm breached its contract with its insured by not paying for the true replacement cost of rebuilding her home.
 5. Insurance coverage issues are important to all consumers in our state. The result of this case was that State Farm, in fact, misled its insured by burying the definition of "replacement cost" within the fine print of the policy. More significantly, the definition read nothing like what a consumer would believe "replacement cost" to mean. This was a victory for consumers in Arizona and particularly for this client who was reimbursed the cost of rebuilding her home following a tragic fire.
27. If you now serve or have previously served as a mediator, arbitrator, part-time or full-time judicial officer, or quasi-judicial officer (e.g., administrative law judge, hearing officer, member of state agency tribunal, member of State Bar professionalism tribunal, member of military tribunal, etc.), give dates and details, including the courts or agencies involved, whether elected or appointed, periods of service and a thorough description of your assignments at each court or agency. Include information about the number and kinds of cases or duties you handled at each court or agency (e.g., jury or court trials, settlement conferences, contested hearings, administrative duties, etc.).

Yavapai County Superior Court, court appointed arbitrator, 2008-present. Arbitrated civil matters assigned to me by the Yavapai County Superior Court through the compulsory arbitration program. Completed approximately 15 arbitration hearings and assigned approximately 30 matters.

State Bar Fee Arbitration Arbitrator, member of the State Bar Fee Arbitration Committee, approximately 2010-present. Arbitrated and conducted mediations of fee disputes between lawyers and lawyers and clients. Have completed approximately ten fee arbitrations and conducted one mediation to resolution. Also served as the chair on two panel fee arbitrations. A panel fee arbitration can occur if the amount in dispute is greater than \$30,000. The panel consists of a lawyer chair, another lawyer and a community member.

Private Insurance Dispute Arbitrator, retained by attorneys to serve on two

Filing Date: May 9, 2019
Applicant Name: Krista M. Carman

panels for an underinsured motorist coverage dispute arbitration. 2017 and 2018. Both matters resolved shortly before arbitration.

28. List at least three but no more than five cases you presided over or heard as a judicial or quasi-judicial officer, mediator or arbitrator. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

Myers v. Da Fonesca

1. January 31, 2017
2. Yavapai County Superior Court, compulsory arbitration
3. Michael J. Gordon, attorney for Plaintiff, michael@gordonlawaz.com, 928-649-8609, Alma Dumitru, attorney for Defendant, almadumitru@law.com, 928-821-0099
4. This case involved a failed partnership agreement for a restaurant in Jerome, Arizona. The Plaintiff was suing for damages alleging the restaurant was not as profitable as was represented to her. Plaintiff had walked away from the business, but was seeking compensation for the equipment and her partnership "buy-in". The defendant counterclaimed for damages alleging the Plaintiff breached the partnership agreement and left him to run the restaurant and bear the costs of the overhead. The amount in controversy was over \$600,000. The court referred it to compulsory arbitration based on an arbitration provision in the contract.
5. The case was a hotly contested partnership dispute. The significance of the case to the arbitrator was that the court had ruled that the matter was subject to compulsory arbitration based on a private arbitration provision in the partnership agreement even though the amount in controversy was over \$600,000. The damages alone made the case more significant than a typical compulsory arbitration matter. The partnership disassociation issues were also very academically interesting to analyze.

Petitioner A v. Respondent F

1. August 24, 2017
2. State Bar Fee Arbitration, La Paz County, panel arbitration. Chair of Panel
3. See confidential section

Filing Date: May 9, 2019
Applicant Name: Krista M. Carman

4. Petitioner sought the assistance of the State Bar in a fee dispute with her son's former criminal defense attorney. Petitioner's son had been arrested and charged with murder and Respondent was the first attorney to represent him. Respondent charged a flat fee of \$35,000 for the defense but was later terminated by the defendant who paid his new lawyer another substantial flat fee. Petitioner was seeking a refund of \$30,000 based on the work that she believed he performed for her son's case.
5. Fee arbitrations are always significant as an accountability mechanism on the fees lawyers charge clients. The fees are analyzed under E.R. 1.5 to determine if the fee charged was reasonable. This gives lawyers a tool by which to judge the fees they charge and also gives clients an ability to evaluate whether they are paying a fair fee for the work being done.

Petitioner E v. Respondent E

1. February 18, 2016
 2. State Bar Fee Arbitration Program, Yavapai County
 3. See confidential information section
 4. This case was referred to the Fee Arbitration Program by State Bar Staff Counsel as part of a bar complaint. Petitioner was a client of Respondent and he alleged that Respondent did little to no work on his case and over-billed for the representation. Respondent's position was that he was unable to successfully represent Petitioner because he was not given the information needed to do so.
 5. The analysis under ER 1.5 in this case revealed that the attorney charged for time after he was terminated by the client and he charged attorney rates for administrative functions. Both of these billing practices are contrary to the rule and the lawyer was ordered to refund a portion of the funds paid to the lawyer by the client.
29. Describe any additional professional experience you would like to bring to the Governor's attention.

As an active community volunteer, I have had the opportunity to hone skills in cultivating relationships, communication, team building, leadership and strategic planning. My efforts have exposed me to new areas of law through these community volunteer opportunities including foster care, education and religious organizations. I have also learned about the struggles experienced by different groups in our county. For example, the

Filing Date: May 9, 2019
Applicant Name: Krista M. Carman

foster community often struggles to understand the basics of the legal system. Many of these families have never had contact with a court or the legal system. The insights I have learned in helping these foster families, has made me a more compassionate attorney and allowed me to understand the experience that the average citizen may have with our courts.

Additionally, the leadership skills I have developed through my board memberships and specifically as president of a local non-profit, have bettered me professionally. I have learned about building an organization, creating a mission and vision, disrupting for change and innovation, and servant leadership. These skills will enrich my professional contributions to the courtroom and the Arizona judiciary.

BUSINESS AND FINANCIAL INFORMATION

30. Have you ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office, other than as described at question 14? Yes If so, give details, including dates.

In 1999, I was a certified elementary and special education teacher. I worked for the Chandler Unified School District teaching special education at Sanborn Elementary School. I have also worked as a substitute teacher for the Prescott Unified School District from approximately 2014-2017.

Additionally, my husband and I are licensed foster parents. Although, we do not consider this an occupation, we do receive funds to pay for the needs of the foster children in our care. We do not currently have any placements in our home, but we are available for respite care as needed for other foster families.

31. Are you now an officer, director, majority stockholder, managing member, or otherwise engaged in the management of any business enterprise? Yes
If so, give details, including the name of the enterprise, the nature of the business, the title or other description of your position, the nature of your duties and the term of your service.

Member of Historic Herndon House, LLC. This is a family investment group consisting of my husband, parents, and me. We own the building that our law office currently occupies and collect rent from the tenants of the building. My role is minor in that I contributed to the purchase of the building and am a part-owner (25%) of the building. I do not participate in the management of this entity.

Member of Junebug Holdings, LLC. This is also a family investment company that is essentially defunct. Formerly, the company purchased tax liens and issued litigation loans. It has been defunct for approximately two years. I have no management role in this entity.

Do you intend to resign such positions and withdraw from any participation in the management of any such enterprises if you are appointed? N/A If not, explain your decision. **I do not participate in the management of these entities and one is defunct.**

32. Have you filed your state and federal income tax returns for all years you were legally required to file them? Yes If not, explain.
33. Have you paid all state, federal and local taxes when due? Yes If not, explain.
34. Are there currently any judgments or tax liens outstanding against you? No If so, explain.
35. Have you ever violated a court order addressing your personal conduct, such as orders of protection, or for payment of child or spousal support? No If so, explain.
36. Have you ever been a party to a lawsuit, including an administrative agency matter but excluding divorce? Yes If so, identify the nature of the case, your role, the court, and the ultimate disposition.

***Hargrove v. Warnock, et al.* – Yavapai County Superior Court, This was a professional negligence case in which I was named solely because I was a partner in a law firm with the named attorneys. There were no factual allegations against me professionally and the case settled in 2016.**

***Gallacher v. Andre Carman, et al.* – Yavapai County Superior Court. Professional negligence allegation by disinherited beneficiaries involving a trust amendment drafted by Andre Carman. The plaintiffs are stepchildren of Andre's now-deceased client. My PLC was named as a defendant partner and was subsequently dismissed. I was named personally as a spouse for community property purposes. The matter was filed in 2017 and is still pending. There are no allegations against me professionally or**

personally in this case.

37. Have you ever filed for bankruptcy protection on your own behalf or for an organization in which you held a majority ownership interest? No If so, explain.
38. Do you have any financial interests including investments, which might conflict with the performance of your judicial duties? No If so, explain.

CONDUCT AND ETHICS

39. Have you ever been terminated, asked to resign, expelled, or suspended from employment or any post-secondary school or course of learning due to allegations of dishonesty, plagiarism, cheating, or any other "cause" that might reflect in any way on your integrity? No If so, provide details.
40. Have you ever been arrested for, charged with, and/or convicted of any felony, misdemeanor, or Uniform Code of Military Justice violation? No
- If so, identify the nature of the offense, the court, the presiding judicial officer, and the ultimate disposition.
41. If you performed military service, please indicate the date and type of discharge. If other than honorable discharge, explain.
Not Applicable
42. List and describe any matter (including mediation, arbitration, negotiated settlement and/or malpractice claim you referred to your insurance carrier) in which you were accused of wrongdoing concerning your law practice.

The only matters are those listed in #36 above but there were no allegations regarding my practice of law in either of those actions or any claims of malpractice against me. However, the matters involved my law partners and therefore were referred to our firm's malpractice carrier.

43. List and describe any litigation initiated against you based on allegations of misconduct other than any listed in your answer to question 42.

None

44. List and describe any sanctions imposed upon you by any court.

Long v. State of Arizona; Wrongful death, § 1983 Civil Rights Violation, Prison Death. I was retained and handled this case pre-litigation and then assisted my clients in retaining litigation co-counsel for the case. I suggested engaging co-counsel due to the other firm's expertise in handling this specific type of case and their success rate in doing so. After co-counsel assumed responsibility for the litigation, my limited role on the case was managing the client communication and relationship. I did not handle any of the litigation or file any pleadings in the case. However, my name was listed as co-counsel on the pleadings due to my ongoing role with the clients. The defense sought sanctions alleging a *Lang* violation that Plaintiffs' expert independently solicited information from a defendant's former employees. Despite conflicting expert opinions on whether there was any violation, the court sanctioned all plaintiffs' attorneys for a *Lang* violation and a Rule 26.1 violation. The sanction was that plaintiffs' expert was stricken; plaintiffs were precluded from calling the former employees of Defendant at trial, and Defendants were awarded their reasonable attorney's fees and expenses related to this specific issue. Co-counsel Anne Findling, Esq., who was chief litigation counsel, paid the sanction, as she did not believe it was a sanction against me due to my lack of participation in the litigation and handling of the experts. However, since my name is listed as an attorney of record on the case, I am disclosing it on this application out of an abundance of caution.

45. Have you received a notice of formal charges, cautionary letter, private admonition, referral to a diversionary program, or any other conditional sanction from the Commission on Judicial Conduct, the State Bar, or any other disciplinary body in any jurisdiction? No If so, in each case, state in detail the circumstances and the outcome.
46. During the last 10 years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by federal or state law? No If your answer is "Yes," explain in detail.
47. Within the last five years, have you ever been formally reprimanded, demoted, disciplined, cautioned, placed on probation, suspended, terminated or asked to resign by an employer, regulatory or investigative agency? No If so, state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) and contact information of any persons who took such action, and the background and resolution of such action.

48. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? No If so, state the date you were requested to submit to such a test, type of test requested, the name and contact information of the entity requesting that you submit to the test, the outcome of your refusal and the reason why you refused to submit to such a test.
49. Have you ever been a party to litigation alleging that you failed to comply with the substantive requirements of any business or contractual arrangement, including but not limited to bankruptcy proceedings? No If so, explain the circumstances of the litigation, including the background and resolution of the case, and provide the dates litigation was commenced and concluded, and the name(s) and contact information of the parties,

PROFESSIONAL AND PUBLIC SERVICE
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50. Have you published or posted any legal or non-legal books or articles? Yes
If so, list with the citations and dates.

A Thematic Unit on Slavery, Teacher Created Materials, Inc., 1999.

"Don't Get Caught Holding the Bag," Prescott Woman Magazine, June 2015.

"Giving Students Hope," Prescott Living Magazine, October 2017.

51. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? Yes If not, explain.

52. Have you taught any courses on law or lectured at bar associations, conferences, law school forums or continuing legal education seminars?
Yes If so, describe.

"Thoughts, Themes, Theories for Convincing the Modern Conservative," Arizona Association for Justice, Advanced Trial Advocacy Conference, October 2017, Co-Presenter with Hon. John Napper.

"An Overview of the 2018 Revisions to the Arizona Rules of Civil Procedure," Verde Valley Bar Association, April 2018

“Client Development, Practice Sustainability and Professionalism,” Yavapai County Bar Association/State Bar of Arizona, May 2018, Panel Member.

53. List memberships and activities in professional organizations, including offices held and dates.

Arizona Association for Justice/Arizona Trial Lawyers Association, Member 2005-present; Board Member, 2012-2016; Executive Board Member, 2016-present. (Currently Vice President).

Yavapai County Bar Association, Member 2004-present, CLE Committee Chair 2008-2011.

Arizona Women Lawyers Association, Northern Arizona Chapter, Member, 2006-present

Arizona Women Lawyers Association, Yavapai Steering Committee, 2018-present.

Have you served on any committees of any bar association (local, state or national) or have you performed any other significant service to the bar? Yes

State Bar of Arizona, Fee Arbitration Program, Member/Arbitrator, 2010-present

State Bar of Arizona, Civil Jury Instructions Committee, Member, 2009-2011

Supreme Court Commission on Appellate Appointments, Appointed by Governor Brewer, 2015-2018.

Supreme Court Committee on Civil Justice Reform, Committee Member Appointed by Chief Justice Scott Bales, 2017.

Yavapai County Bar Association, CLE Committee Chair, 2008-2011

List offices held in bar associations or on bar committees. Provide information about any activities in connection with pro bono legal services (defined as services to the indigent for no fee), legal related volunteer community activities or the like.

CLE Committee Chair, Yavapai County Bar Association. Helped plan and develop CLE programming for the Yavapai County Bar Association.

Filing Date: May 9, 2019
Applicant Name: Krista M. Carman

State Bar Fee Arbitration Program, Fee Arbitrator. Conducted fee arbitrations as requested by the State Bar, *pro bono*.

Regional Mock Trial Competition, Co-Coordinator, Arizona Foundation for Legal Services and Education. March 2019. Organized, coordinated and conducted the regional mock trial competition for high school mock trial teams. Included recruiting volunteers, judges, coordinating use of courthouse, creating the brochure, arranging food, and creating packets for all teams.

Homeless Legal Assistance Project, ASU College of Law, Former Director, 2001-2002.

Law Day, attorney volunteer for free legal advice annually as available; 2005-present.

Veteran's Court Attorney Volunteer, volunteer lawyer for referral to matters for Veteran's as identified through the Veteran's Court program in Yavapai County; 2019-present

Yavapai County Superior Court, arbitrator, although compulsory I requested additional arbitrations as I enjoyed the experience. As an arbitrator, I presided over arbitrations and pre-hearing matters. The majority of this work was pro bono although a small fee or CLE credit was available for a portion of the work as well; 2008-present.

54. Describe the nature and dates of any relevant community or public service you have performed.

Prescott Unified School District Education Foundation, President, 2015-present. Founding and ongoing president for local school district education foundation.

Yes, Yes for Prescott Education Political Action Committee, Co-Chair, 2015. Organized and ran the campaign for the local bond and override election for Prescott Unified School District.

Community Pregnancy Center of Prescott, Board Member 2007-2013, 2016-present. Member of the board of directors for this non-profit organization that supports women and men with unplanned pregnancies.

Yavapai Big Brothers and Sisters, Women of Influence, Steering Committee Member, 2018. Helped plan and organize the Women of Influence Committee to support this organization in Prescott.

55. List any relevant professional or civic honors, prizes, awards or other forms of recognition you have received.

Sarah Herring Soring Award Recipient, 2019, Arizona Women Lawyers Association. This award will be received in June 2019 at the State Bar Convention.

Member of Trademark Woman of Distinction Honors Edition, 2019.

Jack Ogg Community Service Award, Yavapai County Bar Association, 2018.

Reader's Choice – Prescott Area Best Law Firm, Daily Courier Newspaper, 2018.

Visionary Award, Prescott Area Young Professionals, 2016.

Woman of the Year, Nominee, Prescott Area Leadership, 2017.

56. List any elected or appointed public offices you have held and/or for which you have been a candidate, and the dates.

None.

Have you ever been removed or resigned from office before your term expired?
No If so, explain.

Have you voted in all general elections held during the last 10 years?
Yes If not, explain.

57. Describe any interests outside the practice of law that you would like to bring to the Governor's attention.

*

I am passionate about the children in our community. I am an advocate for public education, supporting children's programs through parenting and advocacy, and serving as a foster parent to children in need. It is important to me that all children receive an opportunity to succeed in life no matter the challenges that arise. All children are capable of success—no exceptions.

Filing Date: May 9, 2019
Applicant Name: Krista M. Carman
Page 22

HEALTH

58. Are you physically and mentally able to perform the essential duties of a judge with or without a reasonable accommodation in the court for which you are applying? Yes

ADDITIONAL INFORMATION

59. Provide any information about yourself (your heritage, background, life experiences, etc.) that you would like the Governor to consider.

I am a woman lawyer, and I do not take that title lightly. The practice of law is different for women. As a female litigator and trial lawyer, I am in the minority. When I attend conferences for trial attorneys, I am often asked if I am someone's paralegal. There are biases against women in the courtroom that are not as overt as they once were, but they still exist. Overcoming those challenges and proving myself as a trial lawyer despite my gender has been empowering. It has motivated me to mentor other women to do the same. Each gender brings a different perspective to the practice of law. My gender is not a weakness, but a strength - allowing me the ability to practice law in both subtly and profoundly different ways than my male colleagues in and out of the courtroom.

Additionally, I have been married to a wonderful African American man for over twenty years. We have five bi-racial children. I am a white woman but my experiences within my immediate family have given me insight to the challenges of minority races in our state and county. Racial diversity is another area in which biases exist but are less overt. Because of my marriage, and what I have experienced as a parent in a bi-racial family, I am sensitive to the racial undercurrents that exist in our county.

60. Provide any additional information relative to your qualifications you would like to bring to the Governor's attention.

If selected, I would bring a depth and breadth of practice experience to the bench. I have practiced in most areas of civil litigation including some of the most complex – medical malpractice, employment law, probate, and commercial litigation. I have worked as an appellate attorney gaining insight into many areas of law including family, civil, and bankruptcy. I have practiced in multiple county courts and federal court, which has exposed me

Filing Date: May 9, 2019
Applicant Name: Krista M. Carman

to different legal cultures and judicial management styles. Additionally, I have taken time to study criminal practice and procedure and spent countless hours observing and discussing my observations with sitting judges. In sum, I would like the Governor to know that I am ready to learn, listen and take on this next challenge in my career. It would be an honor to serve the people of Yavapai County as a judge.

61. If selected for this position, do you intend to serve a full term and would you accept rotation to benches outside your areas of practice or interest and accept assignment to any court location? Yes If not, explain.
62. Attach a brief statement explaining why you are seeking this position.
63. Attach two professional writing samples, which you personally drafted (e.g., brief or motion). **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing samples. Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public.
64. If you have ever served as a judicial or quasi-judicial officer, mediator or arbitrator, attach sample copies of not more than two written orders, findings or opinions (whether reported or not) which you personally drafted. **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing sample(s). Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public.
65. If you are currently serving as a judicial officer in any court and are subject to a system of judicial performance review, please attach the public data reports and commission vote reports from your last three performance reviews. **Not applicable.**

62. Statement of Interest in Seeking This Position

My interest in this judicial position stems from my desire to serve the community and the legal profession of Yavapai County. Service has been an integral part of my professional career. The experiences I found most gratifying over the years occurred while I was serving as a: State bar arbitrator; member of a bar association committee; commissioner interviewing potential appellate judges; and while giving advice to those less fortunate and with limited access to legal services at "Law Day." Giving back to the legal profession and my community brings me personal satisfaction, assists those we serve and reflects well on our profession. I purposely integrate service into my career and life for these reasons.

My interest in serving as a judge was particularly piqued when I was a member of the Supreme Court Commission on Appellate Court Appointments. The role of screening and recommending the best-qualified individuals to serve on our appellate courts is critically important to our State and its citizens. Through the process of reviewing applications, conducting due diligence background investigations and interviewing applicants, I began to identify the qualities of a good judge. Qualities such as a calm demeanor, respect among one's peers, even temperament, broad knowledge, adherence to the plain meaning of the law, and respect for the separation of powers doctrine. These judges also demonstrated integrity, compassion, and organizational skills. I realized that many of these qualities were strengths in my practice, personal life, and volunteer activities. Our judges should have a passion for service coupled with impeccable attributes. Our judiciary needs the best candidates to serve the citizens of our State.

As mentioned, my service on the Commission on Appellate Court Appointments ignited my desire to serve as a judge in Yavapai County. I then made the decision to pursue a judicial position. This decision required me to resign from the Commission because the Arizona Constitution required my resignation from the Commission for at least one year prior to becoming eligible for a judicial office appointment. Since my resignation, I have worked diligently to prepare myself for the judicial position that is now available.

I am seeking the Yavapai County Superior Court Judge position because I believe I will be a fair, consistent, and an invested judge. Yavapai County has been so good to my family and me. I would be honored to serve the community I love with my professional training and skills as a superior court judge.

Filing Date: May 9, 2019

Applicant Name: Krista M. Carman

Yavapai County has a history of many fine lawyers and judges. There is no place I enjoy practicing law more than in Yavapai County. I hope to be a part of the great judicial legacy of our county. I have a desire to contribute to the betterment of the judiciary in Yavapai County. I hope to add to the already great knowledge of law, with my particular and unique professional experiences and practice areas. Serving Yavapai County in this capacity would be a professional milestone and one that I would not take for granted.

Filing Date: May 9, 2019

Applicant Name: Krista M. Carman

1 AAA in 2008 so that she would have coverage while she was delivering mail and that is
2 why her limits matched those required by the US Postal Service. CSOF ¶ 62.

3 II. The Commercial Use Exclusion Is Not Available

4 “Provisions of insurance policies are to be construed in a manner according to their
5 plain and ordinary meaning. *Parks v. American Casualty Co. of Reading*, 117 Ariz. 339,
6 572 P.2d 801 (1977). Where the language employed is unclear and can be reasonably
7 construed in more than one sense, an ambiguity is said to exist and such ambiguity will be
8 construed against the insurer. *Ranger Insurance Co. v. Lamppa*, 115 Ariz. 124, 563 P.2d
9 923 (App.1977). In determining whether an ambiguity exists in a policy, the language
10 should be examined from the viewpoint of one not trained in law or in the insurance
11 business. *State Farm Mutual Auto Insurance Co. v. O'Brien*, 24 Ariz.App. 18, 535 P.2d 46
12 (1975).”

13 Here, the language that CSAA relies upon is regarding “commercial use.” The word
14 commercial is not known to the lay person reading an insurance application or policy.
15 ██████ testified that she didn’t understand commercial to mean working for the
16 government or delivering mail. She believed it had to do with private companies like Frito
17 Lay or Hostess. Her lay understanding of the word is the one the court must give
18 consideration to since the application and policy use a word not commonly understood by
19 the public.

20 The commercial use exclusion further cannot be applied to this case because ██████
21 had reasonable expectations that she was insured for the purpose of delivering mail. When
22 ██████ called the agent she told him that she needed \$500,000 limits because she worked
23 for the post office. She did not understand commercial use and it was never explained to
24 her that commercial use included delivering mail. Additionally, ██████ did not ask ██████
25 what she did for the post office, despite her initial statements that she needed extremely high
26 limits because she worked for the post office. Surely, a clerk or janitor for the post office
27 would not be required to have half million dollar limits.

28 “Appellant also relies on the reasonable expectations doctrine. It is understood that,

1 if an insurer desires to limit its liability, it should use language that "clearly and distinctly
2 communicates the nature of the limitation." *Sparks v. Republic Nat'l Life Ins. Co.*, 132 Ariz.
3 529, 535, 647 P.2d 1127, 1133 (1982). Generally, exclusions that subtract from coverage
4 that a consumer reasonably expects must be agreed to and intended, and not merely imposed
5 on an unwitting consumer. *See Barerra*, 200 Ariz. at 16, P 18, 21 P.3d at 402 (citing *Averett*
6 *v. Farmers Ins. Co.*, 177 Ariz. 531, 534, 869 P.2d 505, 508 (1994)). **A court may apply**
7 **the reasonable expectations doctrine when a reasonably intelligent consumer cannot**
8 **understand the policy language**; when an insured does not receive full and adequate
9 notice and the provision is unusual, unexpected, or emasculates apparent coverage; when
10 some activity reasonably attributable to the insurer would create an objective impression of
11 coverage in the mind of a reasonable insured; or when some activity reasonably attributable
12 to the insurer has induced an insured to reasonably believe that coverage exists, although
13 the policy clearly denies such coverage. *Gordinier v. Aetna Cas. & Sur. Co.*, 154 Ariz. 266,
14 272-73, 742 P.2d 277, 283-84 (1987). However, "the reasonable expectation concept must
15 be limited by something more than the fervent hope usually engendered by loss." *Millar v.*
16 *State Farm Fire & Cas. Co.*, 167 Ariz. 93, 97, 804 P.2d 822, 826 (App. 1990) (quoting
17 *Darner Motor Sales, Inc. v. Universal Underwriters [**456] [*507] Ins. Co.*, 140 Ariz.
18 383, 390, 682 P.2d 388, 395 (1984))."
19 *Am. Family Mut. Ins. Co. v. White*, 204 Ariz. 500, 506-07, 65 P.3d 449, 455-56 (Ct. App.
20 2003)." [emphasis added].

21 Here, based on what [REDACTED] told the agent – that she worked for the post office and
22 therefore had to have \$500,000 in coverage, she reasonably expected that while she was
23 working for the post office and was seriously injured by another vehicle crashing into her
24 that she would have coverage in that situation. [REDACTED] did not understand the meaning of
25 commercial – she understood it to mean something different than what she was doing
26 working for the government. She was a reasonably intelligent consumer who simply did
27 not understand the policy language and her agent failed to explain it to her. Additionally,
28 the examples of delivery did not apply to her work and she believed them to fit into her

1 meaning of commercial since pizza and newspaper are both private enterprise. Therefore,
2 her reasonable expectations prevent CSAA from denying coverage pursuant to this
3 "commercial use" exclusion.

4
5 **III. Whether the Fraud or Misrepresentation exclusion is enforceable is a**
6 **question of fact and not appropriate for summary judgment**

7 A.R.S. § 20-1109 provides that "[a]ll statements and descriptions in any application
8 for an insurance policy or in negotiations therefor, by or in behalf of the insured, shall be
9 deemed to be representations and not warranties. Misrepresentations, omissions,
10 concealment of facts and incorrect statements shall not prevent a recovery under the policy
11 unless:
12

13
14 1. Fraudulent.

15
16 2. Material either to the acceptance of the risk, or to the hazard assumed by
17 the insurer.

18 3. The insurer in good faith would either not have issued the policy, or would
19 not have issued a policy in as large an amount, or would not have provided
20 coverage with respect to the hazard resulting in the loss, if the true facts had
21 been made known to the insurer as required either by the application for the
22 policy or otherwise."

23 "Rescission of an insurance policy is permitted only if all three subparagraphs of §
24 20-1109 are satisfied. *State Compensation Fund v. Mar Pac Helicopter Corp.*, 156 Ariz.
25 348, 352, 752 P.2d 1, 5 (App.1987). The burden is on the insurance company to prove
26 each element before rescission is allowed. *Continental Casualty Co. v. Mulligan*, 10
27 Ariz.App. 491, 495, 460 P.2d 27, 31 (1969)." *Greves v. Ohio State Life Ins. Co.*, 170 Ariz.
28 66, 72-73, 821 P.2d 757 (Ct. App. 1991)

1 CSAA has not proven each element. Certainly, [REDACTED]'s actions were not
2 fraudulent. She did not understand what commercial meant. She advised what she needed
3 insurance for and the extremely high limits she was required to have. Had she been asked,
4 she certainly would have advised that she delivered mail for the post office. She did not
5 have the expertise or knowledge to know that it was important. There certainly is no fraud
6 in her actions.
7

8
9 CSAA claims legal fraud. "Legal fraud exists if: [T]he question [asked in an
10 insurance application] is one where the facts are presumably within the personal
11 knowledge of the insured, and are such that the insurer would naturally have contemplated
12 that his answers represented the actual facts, if the representation be false, the insured is
13 guilty of legal fraud, although as a matter of fact he may not have intended to deceive the
14 insurer; but where the question is of such a nature that a reasonable man would know that
15 it represented merely the opinion of the insured, there must be an actual intent to deceive
16 and bad faith on the part of the insured. *Valley Farms*, 78 P.3d at 1074. The insurer
17 therefore must prove an intent to deceive, or actual fraud, when a response to a question
18 on an insurance application is merely an expression of opinion. *Russell*, 974 P.2d at 450."
19
20
21
22 *Med. Protective Co. v. Pang*, 606 F. Supp. 2d 1049, 1057 (D. Ariz. 2008)
23

24 [REDACTED] did not deceive CSAA when [REDACTED] answered "no" to the underwriting
25 question regarding "commercial use" because 1) she didn't complete the application –
26 [REDACTED] made that determination and 2) she didn't understand what commercial meant and
27 [REDACTED] didn't explain it to her.
28

1 Most importantly for purposes of the motion and response before the Court, it is a
2 question of fact whether the third element of A.R.S. §20-1109 has been satisfied. The
3 third element is: "The insurer in good faith would either not have issued the policy, or
4 would not have issued a policy in as large an amount, or would not have provided coverage
5 with respect to the hazard resulting in the loss, if the true facts had been made known to
6 the insurer as required either by the application for the policy or otherwise." In *Valley*
7 *Farms v. Transcon*, the court of appeals found an error in awarding summary judgment
8 where there was a genuine issue of material fact as to whether the insurer would have
9 issued the policy, would have issued it in as large of an amount, or would have provided
10 coverage for the specific damage that eventually occurred had it known additional facts.
11 See 206 Ariz. 349, 78 P.3d 1070 (Ariz. Ct. App. 2003).
12
13
14

15 CSAA has not shown that there is no genuine issue of material fact that it would
16 not have issued "a policy" as it claims. [REDACTED] testified in his deposition that CSAA does
17 sell commercial lines automobile insurance and had he asked [REDACTED] what she did for the
18 post office and he learned she delivered mail, he would have transferred her to the
19 commercial lines office of CSAA in Phoenix. Mark [REDACTED]'s Deposition, Exhibit 1, pg 21,
20 ll. 9-25, pg. 22, ll.1-7, pg. 42, ll.18-25. [REDACTED] further testified that the commercial agents
21 would have definitely given [REDACTED] quotes and it would be up to her whether she
22 purchased the insurance or not. Pg. 43, ll.1-3.
23
24
25
26

27 There is at a minimum a question of fact as to whether CSAA has proven each
28 element of A.R.S. § 20-1109. CSAA has failed to prove legal fraud and failed to prove

settlement conference pursuant to the parties' stipulation?

4) Did the trial court err in denying the Appellant's motion *in limine* and allowing Dr. Cady to testify in trial?

5) Did the trial court err when it allowed real estate agent Abbie Roses to testify with no objection from the parties after the court disclosed a familiarity with her?

STANDARD OF REVIEW

Contrary to Appellant's statement regarding the Standard of Review, the standard of review here is abuse of discretion. The appellate court reviews a trial court's determination in a child custody dispute for a clear abuse of discretion. Owen v. Blackhawk, 206 Ariz. 418, ¶ 7, 79 P.3d 667, 669 (App. 2003).

LEGAL ARGUMENT

After two long trial days, multiple exhibits, and written closing arguments; the trial court entered a ten-page under-advisement ruling factually and legally supporting her decision in this case. There was no abuse of discretion and her decision must be affirmed.

I. THE TRIAL COURT PROPERLY RESTRICTED APPELLANT'S PARENTING TIME.

A. A.R.S. § 25-411 is not the correct standard.

Appellant cites A.R.S. § 25-411(A) as the standard to apply in this case. However, Appellant fails to mention that the section quoted regarding the reason

to believe that the child's present environment may seriously endanger the child is preceded with this language: "A person shall not make a motion to modify a legal decision-making or parenting time decree earlier than one year after its date..." This section is not applicable to this case. The decree in this case was issued in March 2012. (IR 63). Clearly, more than a year earlier than the Emergency Petition to Modify Child Custody, Parenting Time and Legal Decision Making and for Random Drug and Alcohol Testing of Father that was filed December 2013. (IR 128). The applicable standard for this case is found in A.R.S. § 25-403.

B. The trial court properly applied A.R.S. § 25-403.

A trial court's decision regarding legal decision making and parenting time made pursuant to A.R.S. § 25-403 is reviewed for an abuse of discretion. The trial court is given broad discretion to determine what will be most beneficial for the child, but the primary consideration must be the child's welfare. Porter v. Porter, 21 Ariz. App. 300, 302, 518 P.2d 1017, 1019 (1974); *see also* A.R.S. § 25-403(B) (requiring court in contested cases to "make specific findings on the record about all relevant factors and the reasons for which the decision is in the best interests of the child"); Jordan v. Rea, 221 Ariz. 581, ¶ 16, 212 P.3d 919, 926 (App. 2009) (terms in parenting plan must be in child's best interests). The court abuses its discretion if the record, "viewed in the light most favorable to upholding the trial court's decision, is 'devoid of competent evidence to support'

the decision.” Little, 193 Ariz. 518, ¶ 5, 975 P.2d at 110, quoting Fought v. Fought, 94 Ariz. 187, 188, 382 P.2d 667, 668 (1963).

The trial court provided copious support for its reason to restrict Appellant’s parenting time. In fact, the under-advisement ruling consists of approximately five pages of reasons for the restriction. For Appellant to argue otherwise is a charade in front of this Court.

Appellant manipulates and minimizes the factual support by, for example, stating that the children had three tardies and six absences in “two academic years,” when the record actually states there were three tardies and six absences between March 18 and May 8 (SOF 16)—approximately, six weeks of school in the same academic year.

To summarize the court’s findings and reasons to limit Appellant’s parenting time : (1) the contemporaneous records of dates and times wherein the Father failed to comply with parenting times (SOF 17); (2) evidence of the ten year old daughter texting her father to see if he was awake during times when a parent should be awake and caring for the children (SOF 18); (3) evidence of text messages from the ten year old daughter informing her father and step mother that the children were late for school and to please wake up (SOF 19); (4) Father’s lack of response to texts from Mother confirming pick up times and location while children were in his care (SOF 20); (5) Father’s lack of compliance with the

court orders for full panel drug screening (SOF 21); (6) Father's failure to show up for his pre-arranged parenting times (SOF 23, 24); and (7) Father's failed drug tests due to diluted sample and failure to show up when his color was called (SOF 25).

Additionally, the Court listed and analyzed each best interest category pursuant to A.R.S. § 25-403. The greatest concern was "the mental and physical health of all individuals involved." (IR 217, p. 3). The trial court meticulously cited to the record and noted numerous concerns regarding the Appellant's mental health. The court cited to his neuropsychological evaluation in 2012 in which it was noted that "there were no apparent problems with attention, concentration or alertness observed." (SOF 34(a)) The court contrasted this finding with his car accident in November 2013 and the police investigation that followed. The officers in that situation noted that Father "appeared very tired and was talking in a way that made absolutely no sense." (SOF 34(b),(c)). Of additional concern to the court were the "several" prescriptions in his possession at the time. A collection of his urine in the field revealed positive Amphetamines and Benzodiazepines. Father had admitted to taking Adderall within two hours prior and one-half of an Ambien the night before—yet, he stated he had not slept for 24 hours and was headed to Kingman to start a shift as an emergency room doctor. (SOF 34(b);(c)).

The court's analysis continued pointing out red flags raised by the contents of Appellant's evaluations: "Father's recent and progressively declining behavior including the DUI, criminal charges, domestic violence incident, Medical Board investigation, license suspension/unemployment and consequential financial issues are concerning given they constitute stressors that challenge and, at times, impair Father's judgment and may place the children at risk without monitoring." (IR 217, p. 5).

Additionally, [REDACTED], Appellant's former significant other, testified to Father's alcohol and recreational drug use including cocaine and Ketamine. Further, the evidence of damage to the Appellant's foreclosed home, which was intentionally inflicted on the home, was viewed as further evidence of an inappropriate environment for the children. (IR 217, p. 5).

[REDACTED] also testified about a troubling incident when a hotel in Phoenix called her and requested permission to wake Appellant and they relayed their concern his wallet had been found in the bottom of a hotel pool next door along with his keys. Appellant missed a scheduled shift as an emergency room physician at the Prescott hospital on this date. (IR 217, p. 5).

The court's final conclusion was, "when the evidence of record is examined in its totality, and when considering the numerous instances of highly unusual behavior by Father, the Court is persuaded that drug use by Father

1 partners in a restaurant. The Agreement provides that [REDACTED] is a 40% owner of the business and
2 the agreed value of her percentage is \$30,000. Per the Agreement, [REDACTED] is a 60% owner
3 of the business and his contribution is valued at \$42,000. The Arbitrator finds that both parties
4 entered into this Agreement in good faith. The Arbitrator is not persuaded that either party
5 fraudulently misrepresented their skills or abilities to induce the other to enter into the
6 Agreement. Both parties desired to own this restaurant and each brought a different skill set to
7 this partnership: Mr. [REDACTED] would handle the business and management side and Ms.
8 [REDACTED] would handle the food and menu side.

9
10
11 The Agreement does provide that Mr. [REDACTED] was to open a bank account in the name
12 of the partnership which he failed to do. However, a material breach occurs when a party fails
13 to do something required by the contract which is so important to the contract that the breach
14 defeats the very purpose of the contract. The evidence supports that Mr. [REDACTED] opened a
15 new bank account in his name for the purpose of managing the restaurant, but he did not open
16 the account in the name of the business or form an LLC. This Arbitrator finds that these breaches
17 were not material as they did not defeat the very purpose of the contract. Given that as of January
18 2014, Ms. [REDACTED] had announced her intention to withdraw from the partnership, the creation of
19 an LLC was no longer necessary. Additionally, the Arbitrator finds that Mr. [REDACTED] opened
20 the new bank account in his name but with the initial capital required pursuant to the Agreement
21 and that expenses for the restaurant were paid from this account. He used his capital contribution
22 as the opening deposit and he paid all bills and received all deposits for the restaurant from this
23 account. Any commingling of funds was minimal and, again, not material. The breach of
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1 contract regarding commingling of funds could result in damages to Ms. [REDACTED]; but, given the
2 totality of the evidence, there was no substantiation of actual damages from the few personal
3 items used to pay Mr. [REDACTED]'s personal expenses. This is especially the case given that
4 there was no evidence that Mr. [REDACTED] received any draws or salary from the partnership.
5

6 Pursuant to the Agreement, a partner may voluntarily withdraw from the Partnership at
7 anytime.¹ Ms. [REDACTED] provided her notice in January 2014. The Agreement provides that the
8 written notice (in this case this appears to have been by text message) must be given three months
9 prior to the actual withdrawal. Therefore, this Arbitrator finds that Ms. [REDACTED] voluntarily
10 withdrew from the partnership and the partnership was dissolved as of April 2014. The
11 Agreement also states that, "It remains incumbent on the Dissociated Partner to exercise the right
12 to withdraw in good faith and to minimize any present or future harm done to the remaining
13 partners as a result of the withdrawal." Agreement ¶30. There was evidence that Ms. [REDACTED]
14 posted derogatory comments and a cease and desist on a popular social media review site, but
15 there was no evidence of damages suffered as a result. However, her actions did not indicate
16 good faith in minimizing harm to her former partner.
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21 Having found that the partnership was dissolved as of April 2014, paragraph 32 addresses
22 valuation of the partnership. Pursuant to the Agreement, following the dissolution of the
23 partnership all debts are to be paid first, prior to any distribution of any remaining funds. The
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26 ¹ The partnership agreement forbids a partner from voluntarily withdrawing within the first three
27 months of the partnership. The Agreement was signed in August 2013, but Plaintiff's notice
28 to withdraw was given in January. Therefore, the withdraw was allowable under the
Agreement.

1 Agreement references the Valuation of Interest paragraph 37 to determine the value of the
2 partnership at the time of dissolution. There is no written agreement setting the value of the
3 partnership. The value is to "be based on the fair market value appraisal of all Partnership assets
4 (less liabilities) determined in accordance with generally accepted accounting procedures. This
5 appraisal will be conducted by an independent accounting firm agreed to by all Partners....A
6 withdrawing Partner's interest will be based on the proportion of their respective Profit and Loss
7 sharing ratio less any outstanding liabilities the withdrawing Partner may have to the
8 Partnership." Additionally, paragraph 38 provides that "[n]o allowance will be made for
9 goodwill..."

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13 The evidence presented does not indicate the value of the Partnership in April 2014.
14 There was no independent accounting firm agreed upon by the partners to conduct a valuation.
15 However, the evidence does include a valuation by an expert retained by Ms. [REDACTED]. There
16 being no contradictory evidence as to value by Mr. [REDACTED], the Arbitrator therefore finds
17 that Mr. [REDACTED] agrees with the valuation. The Opinion of Value dated December 1, 2016
18 states that the restaurant, which was the subject of the partnership, had a value as of the date of
19 the report of \$45,000. Pursuant to the Agreement, Ms. [REDACTED] should be paid 40% of \$45,000 or
20 \$18,000 less any debts of the partnership. The evidence presented was that Mr. [REDACTED] has
21 been paying all debts of the partnership (wages, food, lease etc.) since the beginning of the
22 partnership and Ms. [REDACTED] did not contribute any additional capital besides her initial \$30,000.
23 Further, Ms. [REDACTED] seeks a salary for her contributions to the menu and kitchen while she was
24 working in the partnership, but Mr. [REDACTED] also contributed through his management and it
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1 appears that he was not getting a salary or draws at least as of 2016. After payment of the debts,
2 based on the evidence provided to this Arbitrator, there are no remaining funds to distribute to
3 Ms. [REDACTED].
4

5 As to the Plaintiff's claims of fraud and breach of the covenant of good faith and fair
6 dealing, the Arbitrator finds for the Defendant. Additionally, the Plaintiff filed claims of judicial
7 dissolution and accounting in her complaint. The Arbitrator finds that the Partnership was
8 dissolved pursuant to Ms. [REDACTED]'s voluntary withdrawal and, pursuant to the terms of the
9 Agreement, the partnership is deemed dissolved as of April 2014. As of the time of the hearing,
10 the issue of an accounting was no longer at issue since Mr. [REDACTED] had provided all of his
11 bank statements and business records to the Plaintiff, and Ms. [REDACTED] did not prove any damages
12 as a result of the delay.
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14

15 Regarding the Defendant's counterclaims, the Arbitrator finds for Plaintiff on the breach
16 of contract claim. Although Ms. [REDACTED] was not successful as an executive chef, she did not
17 breach her contract in that role; rather, she voluntarily withdrew from the partnership when she
18 realized she was not fit for the job. The Arbitrator likewise finds for Plaintiff on Mr. Da
19 Fonseca's breach of the covenant of good faith and fair dealing count. The Arbitrator finds for
20 Plaintiff on the fraud and negligent misrepresentation claims as there was no evidence that either
21 party fraudulently or negligently induced the other to enter into the Agreement. As to the
22 defamation claim, no defamation and no damages in any event were proven. Therefore, the
23 Arbitrator finds for the Plaintiff on this count. Finally, the Arbitrator finds for Plaintiff on the
24 claim of commercial disparagement and injurious falsehood for the same reason.
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1 Finally, any request for punitive damages is denied as the elements were simply unmet
2 by the parties.

3
4 In sum, the Arbitrator finds that Ms. [REDACTED] voluntarily withdrew from the partnership
5 and the partnership was thereupon dissolved in April 2014. Pursuant to the method of calculation
6 in the Agreement, it is determined that Ms. [REDACTED] receives nothing for her distribution of assets
7 of the partnership. Further, Mr. [REDACTED] has also failed to prove actual damages for his
8 claims. There being no prevailing party, no costs or attorney's fees are awarded to either party.
9

10 Pursuant to ARCAP 76, either party may submit a form of award within ten days. Further,
11 the exhibits from the arbitration are available for pick up or they will be shredded within ten
12 days if the undersigned's office is not contacted prior to that time.
13

14 DATED this 12th day of March, 2017.

15
16 By 

17 Krista M. Carman
18 Arbitrator

19 ORIGINAL of the foregoing filed this
20 12th day of March, 2017, with:

21 Clerk of the Court
22 Yavapai County Superior Court

23 COPIES of the foregoing emailed/mailed this
24 12th day of March, 2017, to:

25 Michael J. Gordon, Esq.
26 Gordon & Gordon, PLLC
27 850 Cove Parkway, Suite A
28 Cottonwood, AZ 86326
Attorneys for Plaintiff

1 testimony the documents provided by Mr. [REDACTED] were not sufficient to complete the
2 disclosure statement. Throughout late May and early June it appears from the
3 documents that Mr. [REDACTED] requested documents to prepare the 26.1 statement and
4 some were provided but not all. On June 7, Mr. [REDACTED] sent a letter to Mr. [REDACTED] and
5 requested a great deal of detailed information from Mr. [REDACTED] in order to complete the
6 26.1 Disclosure. Mr. [REDACTED] was sending multiple emails throughout the course of the
7 representation requesting status and to speak with Mr. [REDACTED] over the phone.

8 It is undisputed that Mr. [REDACTED] provided a \$10,000 retainer to Mr. [REDACTED] at the
9 beginning of the representation. Mr. [REDACTED] billed against this retainer three times
10 charging a total of \$5,535.00. Mr. [REDACTED] did receive a refund from the unused retainer
11 at the conclusion of the representation.

12 At the hearing Mr. [REDACTED] expressed his dissatisfaction with the quality and
13 quantity of communication with [REDACTED] Esq.. Mr. [REDACTED] was also dissatisfied that
14 the things he had retained Mr. [REDACTED] to do were never done. Mr. [REDACTED] expressed
15 frustration that he was unable to complete the task he was hired to do because Mr.
16 [REDACTED] would not provide the information to him to do so.

17 Mr. [REDACTED] ultimately grew so frustrated with the relationship that he terminated
18 Mr. [REDACTED]

20 Findings of Fact

- 21 1. The representation commenced on April 30, 2013 and Mr. [REDACTED] was terminated
22 on or about June 17, 2013.
23 2. Mr. [REDACTED] charged \$225 per hour and has been practicing law for nearly 40 years.
24
25

- 1 3. Mr. [REDACTED] was retained to complete the Rule 26.1 Disclosure Statement and he
2 never received all the information he requested to complete that task.
- 3 4. Mr. [REDACTED] requested telephonic communication from Mr. [REDACTED] through his office
4 staff multiple times. Mr. [REDACTED] and Mr. [REDACTED] spoke four times over the phone
5 during the course of the representation and Mr. [REDACTED] sent four letters to Mr.
6 [REDACTED]
- 7 5. Mr. [REDACTED] sent 45 emails to Mr. [REDACTED] during the course of the approximately 6
8 weeks of representation.
- 9 6. Mr. [REDACTED] testified at the hearing that he did not disagree with the invoice dated
10 May 10, 2013 from Mr. [REDACTED]'s office totaling \$945.00.
- 11 7. Mr. [REDACTED] billed for time traveling to and from the courthouse from Sedona to
12 Cottonwood at his full attorney rate.
- 13 8. Mr. [REDACTED] billed 4.8 hours after the date he was terminated by Mr. [REDACTED] to:
 - 14 a. Review communication from client refusing assistance in meeting
15 deadlines
 - 16 b. Prepare comprehensive letter to client detailing events in
17 representation and further offer to help
 - 18 c. Review/Finalize and file with the Court Motion to Withdraw and Order
 - 19 d. Review and analyze communication from opposing attorneys after
20 notifying of withdrawal
 - 21 e. Travel to court to file motion to withdraw and order
 - 22 f. Communicate with opposing counsel to verify receipt of Motion to
23 Withdraw
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1 9. Mr. [REDACTED] testified he felt that 2/3 of the time billed after the May 10 invoice was
2 overcharged.

3 **Determination of Reasonableness**

4 The relevant rule governing determination of a reasonable fee is ER 1.5(a). The
5 factors to be considered in determining reasonableness of a fee are:

- 6 1) The time and labor required, the novelty and difficulty of the questions
7 involved, and the skill requisite to perform the legal service properly;
8 2) The likelihood, if apparent to the client, that the acceptance of the particular
9 employment will preclude other employment by the lawyer;
10 3) The fee customarily charged in the locality for similar legal services;
11 4) The amount involved and the results obtained;
12 5) The time limitations imposed by the client or by the circumstances;
13 6) The nature and length of the professional relationship with the client;
14 7) The experience, reputation, and ability of the lawyer or lawyers performing the
15 services, and
16 8) The degree of risk assumed by the lawyer.
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19 Of the above, the arbitrator finds that factors 3 and 5 are in favor of the
20 Petitioner. Mr. [REDACTED] has been practicing law for nearly forty years and he charged \$225
21 per hour to work on Mr. [REDACTED]'s case. This is well within a reasonable fee for a lawyer
22 of his experience practicing civil law in Northern Arizona. Additionally, Mr. [REDACTED]
23 retained Mr. [REDACTED] with a tight disclosure deadline that needed to be extended and
24 stipulated to with adverse counsel. Mr. [REDACTED] failed to provide all of the requested
25 information that would allow Mr. [REDACTED] to complete the task for which he was retained.

1 These circumstances made it impossible for Mr. [REDACTED] to satisfy the client's expectations
2 on completion of work.

3 Factor 6 addresses the nature and length of the relationship with the client. Mr.
4 [REDACTED] was Mr. [REDACTED]'s client for approximately six weeks. After the first 15 days of
5 representation, the relationship turned more and more sour. There was a serious lack
6 of communication between the two. Mr. [REDACTED] sent excessive e-mails to Mr. [REDACTED] and
7 Mr. [REDACTED] failed to communicate by phone as much as Mr. [REDACTED] requested.

8 Factor 4, the amount involved and the results obtained does not influence this
9 decision either way. The underlying dispute had an amount in controversy of
10 approximately \$125,000. Mr. [REDACTED] was retained to complete a Rule 26.1 Disclosure
11 Statement, a Motion to Compel and a Motion for Security Bond. Both parties testified
12 that the disclosure was the priority. This task was never completed, however, that was
13 due to the lack of cooperation in providing the information from Mr. [REDACTED] Mr. [REDACTED]'s
14 hands were tied until he received the information from his client on the basis for Mr.
15 [REDACTED]'s defenses and counterclaim.

16 Factor 3, also weighs in favor of the Respondent. Mr. [REDACTED] charged his full fee
17 to deliver documents to the courthouse and file them. This is an administrative function
18 that should be billed at a runner or paralegal rate not at an attorney's billable hourly
19 rate. It is unreasonable to expect a client to pay full attorney time for a court runner's
20 tasks. This arbitrator does not dispute the need to go to the court and review the file on
21 May 24, 2013, as Mr. [REDACTED] testified he needed to see the entire court file in order to
22 prepare for the Rule 26.1 as the client did not provide all filings in the case. Mr. [REDACTED]
23 charged for two trips to the court on this date, however. The second trip was to execute
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1 and file documents to extend the Rule 26.1 deadline. This trip could have been done by
2 support staff or a court runner. Additionally, on June 20, 2013, Mr. [REDACTED] charged for
3 time to travel to the court and file a Motion to Withdraw. This is another task for support
4 staff or a court runner – not an attorney's billable time.

5 Additionally, Mr. [REDACTED] charged his client for 4.8 hours of time after he was fired.
6 It is unreasonable to charge the client to prepare a motion to withdraw, to file the same,
7 for review of communication from client refusing assistance, letter to client advising of
8 deadlines due to termination, review communication from opposing counsel regarding
9 withdrawal from case, and communication to opposing counsel to verify receipt of
10 motion to withdraw. Once the client terminated Mr. [REDACTED] and advised that he did not
11 wish for him to do any further work, Mr. [REDACTED] needed to complete the necessary steps
12 to withdraw and not charge to do so.

13 It is acknowledged that Mr. [REDACTED] was a challenging client. He was traveling
14 between locations, did not provide the needed information to complete the task for
15 which he retained Mr. [REDACTED], and he inundated Mr. [REDACTED] with e-mails (45). Toward the
16 end of the relationship, Mr. [REDACTED] was completely inappropriate in his accusations and
17 words in those emails. However, this does not weigh in on whether the billed time was
18 reasonable for the work performed. It should be noted that Mr. [REDACTED] was generous in
19 that he did not bill for the excessive emails obtained from Mr. [REDACTED]

21 AWARD

22 Based on the evidence and after reviewing the disputed time records, the
23 arbitrator finds that Mr. [REDACTED] overbilled for 4.8 hours or \$1080.00, plus the court filing
24 trips which should have been billed at \$100 per hour at most (paralegal time) for a total
25